

MICHELLE B. HEVERLY, Bar No. 178660
TODD K. BOYER, Bar No. 203132
MICHAEL E. HARVEY, Bar No. 267684
LITTLER MENDELSON, P.C.
50 W. San Fernando, 15th Floor
San Jose, CA 95113.2303
Telephone: 408.998.4150
Facsimile: 408.288.5686

Attorneys for Defendant
UNITED RENTALS NORTHWEST, INC.
(ERRONEOUSLY SUED HEREIN AS UNITED
RENTALS, INC.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DANIEL RAMIREZ,

Plaintiff,

v.

UNITED RENTALS, INC., a Delaware
Corporation, and DOES 1 through 100,
inclusive,

Defendant.

Case No. 5:10-cv-04374 -EJD

**STIPULATION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT AND
FOR LEAVE TO FILE AMENDED
ANSWER TO COMPLAINT/FIRST
AMENDED COMPLAINT**

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, Defendant United Rentals Northwest, Inc. (erroneously sued herein as United Rentals, Inc.) (hereinafter "United Rentals" or "Defendant") and Plaintiff Daniel Ramirez (hereinafter "Plaintiff") hereby stipulate as follows:

1. United Rentals Northwest, Inc., and not United Rentals, Inc., is the proper party Defendant in this action. In order to effectuate the substitution of United Rentals Northwest, Inc. for United Rentals, Inc. as a named Defendant in this action, Plaintiff may file a First Amended Complaint within thirty (30) days of signing this stipulation to substitute United Rentals Northwest, Inc. for United Rentals, Inc.

2. Plaintiff's First Amended Complaint may also name up to two additional plaintiffs as class representatives, if such First Amended Complaint is filed within the thirty (30) day period. No other changes, claims or causes of action may be made or raised in the First Amended Complaint. Defendant reserves all rights, objections, and defenses with respect to the propriety of the class representatives identified in the First Amended Complaint.

3. The parties agree to allow Defendant to file an Amended Answer to Plaintiff's original Complaint, in the form attached to as Exhibit A. Defendant may file an Answer to Plaintiff's First Amended Complaint within 10 days of Plaintiff filing the First Amended Complaint. Defendant's Answer to Plaintiff's First Amended Complaint.

Dated: December 12, 2011

/s/ Helen Marsh
HELEN MARSH
LAW OFFICES OF DANIEL FEDER
Attorneys for Plaintiff
DANIEL RAMIREZ

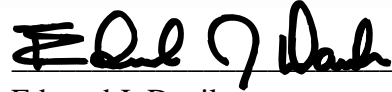
Dated: December 12, 2011

/s/ Todd K. Boyer
TODD K. BOYER
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
UNITED RENTALS NORTHWEST, INC.

ORDER

Good cause appearing, the parties stipulation to allow Plaintiff to file a First Amended Complaint, and for Defendant to file an Answer thereto as set forth in the Stipulation above, is hereby GRANTED. On or before December 16, 2011 Defendant shall file its Answer as attached Exhibit A as a separate docket entry. The pleading should also reflect the correct case number as follows: 5:10-cv-4374-EJD

Dated: December 15, 2011



Edward J. Davila

United States District Judge

Firmwide:105153758.2 028767.1089

EXHIBIT A

MICHELLE B. HEVERLY, Bar No. 178660
TODD K. BOYER, Bar No. 203132
MICHAEL E. HARVEY, Bar No. 267684
LITTLER MENDELSON, P.C.
50 W. San Fernando, 15th Floor
San Jose, CA 95113.2303
Telephone: 408.998.4150
Facsimile: 408.288.5686

Attorneys for Defendant
UNITED RENTALS NORTHWEST, INC.
(ERRONEOUSLY SUED HEREIN AS UNITED
RENTALS, INC.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DANIEL RAMIREZ,

Plaintiff,

v.

UNITED RENTALS, INC., a Delaware
Corporation, and DOES 1 through 100,
inclusive,

Defendant.

Case No. 5:10:cv-04372-EJD

**DEFENDANT UNITED RENTALS
NORTHWEST, INC.'S AMENDED
ANSWER TO PLAINTIFF'S COMPLAINT**

Defendant United Rentals Northwest, Inc. ("Defendant") hereby answers Plaintiff Daniel Ramirez' ("Plaintiff") First Amended Complaint by admitting, denying, and alleging as follows:

1. Answering the allegations of paragraph 1, Defendant admits that Plaintiff was employed by Defendant United Rentals Northwest, Inc. as a delivery driver in the City of San Jose and County of Santa Clara, California. Defendant denies that Plaintiff was employed by "UNITED RENTALS, INC." Defendant is unable to admit or deny the remaining allegations as Defendant lacks sufficient information upon which to admit or deny the truth of the remaining factual allegations contained in paragraph 1, and on that basis denies the remaining allegations of said paragraph.

1 2. Answering the allegations of paragraph 2, Defendant admits that United
2 Rentals, Inc. is a Delaware corporation. Defendant denies that United Rentals, Inc. is currently, and
3 at all relevant times in the Complaint was, doing business in the State of California because United
4 Rentals, Inc. is principally a holding company, that conducts its operations through its subsidiaries,
5 but United Rentals, Inc. does not itself conduct business in California, nor did it at any relevant times
6 in the Complaint. Defendant admits that Defendant United Rentals Northwest, Inc. was, and still is,
7 a corporation incorporated under the laws of the State of Oregon with its principal place of business
8 in the state of Connecticut. Defendant admits that United Rentals Northwest, Inc., among other
9 things, provides rentals of heavy equipment and operates stores throughout the State of California.
10 Except as so admitted, Defendant denies each and every allegation in paragraph 2.

11 3. Answering the allegations of paragraph 3, Defendant is without sufficient
12 knowledge or information to form a belief as to the truth of the allegations contained in said
13 paragraph, and on that basis denies each and every allegation contained therein.

14 4. Answering the allegations of paragraph 4, Defendant is unable to admit or
15 deny the allegations because there are no factual allegations in this paragraph.

16 5. Answering the allegations of paragraph 5, Defendant is unable to admit or
17 deny the allegations because there are no factual allegations in this paragraph.

18 6. Answering the allegations of paragraph 6, Defendant is without sufficient
19 knowledge or information to form a belief as to the truth of the allegations contained in said
20 paragraph, and on that basis denies each and every allegation contained therein.

21 7. Answering the allegations of paragraph 7, Defendant is unable to admit or
22 deny the allegations because there are no factual allegations in this paragraph.

23 8. Answering the allegations of paragraph 8, Defendant admits that Plaintiff was
24 employed by Defendant United Rentals Northwest, Inc. in the County of Santa Clara. Except as so
25 admitted, Defendant denies each and every allegation contained in the said paragraph.

26 9. Answering the allegations of paragraph 9, Defendant is unable to admit or
27 deny the allegation that State policy favors jurisdiction and venue in Santa Clara County, because, as
28 stated, these are conclusions of law or legal principles asserted by Plaintiff and are not allegations of

1 fact to which an admission or denial is required by the Federal Rules of Civil Procedure. To the
2 extent said paragraph contains allegations of fact, Defendant denies each and every allegation
3 contained therein.

4 10. Answering the allegations of paragraph 10, Defendant admits that some of the
5 witnesses and evidence relevant to this case are located in Santa Clara County in California. Except
6 as so admitted, Defendant denies each and every allegation contained in said paragraph.

7 11. Answering the allegations of paragraph 11, Defendant denies that Defendant
8 suffers no burden or hardship by having to defend this case in Santa Clara County Superior Court
9 and the case is properly removed to Federal Court. Defendant is without sufficient knowledge or
10 information to form a belief as to the truth of the remaining allegations contained in paragraph 11,
11 and on that basis denies each and every allegation contained therein.

12 12. Answering the allegations of paragraph 12, Defendant admits that the amount
13 in controversy exceeds the minimum jurisdictional threshold of the Santa Clara County Superior
14 Court and for the United States District Court, but Defendant denies liability for said amount.

15 13. Answering the allegations of paragraph 13, Defendant admits that it employed
16 Plaintiff from on or about February 2005 through February 19, 2010 as a delivery driver. At the
17 time of Plaintiff's termination, Plaintiff's pay rate was \$21.2492 per hour. Except as so admitted,
18 Defendant denies each and every allegation contained in the said paragraph.

19 14. Answering the allegations of paragraph 14, Defendant denies each and every
20 allegation of paragraph 14.

21 15. Answering the allegations of paragraph 15, Defendant denies each and every
22 allegation of paragraph 15.

23 16. Answering the allegations of paragraph 16, Defendant is unable to admit or
24 deny the allegations because there are no factual allegations in this paragraph.

25 17. Answering the allegations of paragraph 17, Defendant denies each and every
26 allegation of paragraph 17.

27 18. Answering the allegations of paragraph 18, Defendant denies each and every
28 allegation of paragraph 18.

1 19. Answering the allegations of paragraph 19, Defendant denies each and every
2 allegation of paragraph 19.

3 20. Answering the allegations of paragraph 20, Defendant admits that it has
4 employed delivery drivers in the State of California. Except as so admitted, Defendant denies each
5 and every allegation contained in said paragraph.

6 21. Answering the allegations of paragraph 21, Defendant denies each and every
7 allegation of paragraph 21.

8 22. Answering the allegations of paragraph 22, Defendant is without sufficient
9 knowledge or information to form a belief as to the truth of the allegations contained in said
10 paragraph, and on that basis denies each and every allegation contained therein.

11 23. Answering the allegations of paragraph 23, Defendant is without sufficient
12 knowledge or information to form a belief as to the truth of the allegations contained in said
13 paragraph, and on that basis denies each and every allegation contained therein.

14 24. Answering the allegations of paragraph 24, Defendant is without sufficient
15 knowledge or information to form a belief as to the truth of the allegations contained in said
16 paragraph, and on that basis denies each and every allegation contained therein.

17 25. Answering the allegations of paragraph 25, Defendant is without sufficient
18 knowledge or information to form a belief as to the truth of the allegations contained in said
19 paragraph, and on that basis denies each and every allegation contained therein.

20 26. Answering the allegations of paragraph 26, Defendant denies each and every
21 allegation of paragraph 26.

22 27. Answering the allegations of paragraph 27, Defendant admits that at least
23 some of the names and current and/or former addresses of persons who are members of the proposed
24 class are available from Defendant's records. Except as so admitted, Defendant denies each and
25 every allegation contained in the said paragraph.

26 28. Answering the allegations of paragraph 28, Defendant denies engaging in
27 "unlawful acts and unfair trade practices," and on that basis, denies further that such acts and
28 practices affected members of the proposed class. Defendant denies that any or all members of the

1 proposed class have been denied all wages, overtime, and meal and rest periods. Defendant is
 2 unable to admit or deny the remaining allegations of paragraph 28, because, as stated, these are
 3 questions of law or fact asserted by Plaintiff, and are not allegations of fact to which an admission or
 4 denial is required by the Federal Rules of Civil Procedure. To the extent remaining allegations of
 5 said paragraph contain allegations of fact, Defendant denies each and every allegation contained
 6 therein.

7 29. Answering the allegations of paragraph 29, Defendant denies each and every
 8 allegation of paragraph 29.

9 30. Answering the allegations of paragraph 30, Defendant denies that Plaintiff has
 10 no interests that are adverse to or in conflict with other members of the class. With respect to the
 11 remaining allegations in paragraph 30, Defendant is without sufficient knowledge or information to
 12 form a belief as to the truth of such allegations, and on that basis denies each and every allegation
 13 contained therein.

14 **DEFENDANT'S ANSWER TO PLAINTIFF'S GENERAL FACTUAL**
 15 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 31. Answering the allegations of paragraph 31, Defendant admits that Plaintiff
 17 purports to have brought this action on behalf of himself and all current and former delivery drivers
 18 employed in the State of California by Defendant during all applicable statutes of limitations.
 19 Defendant denies that Plaintiff is an appropriate class representative. Except as so admitted,
 20 Defendant denies each and every allegation contained in the said paragraph.

21 32. Answering the allegations of paragraph 32, Defendant admits that Plaintiff
 22 worked for Defendant United Rentals Northwest, Inc. from on or about February 2005 through
 23 February 19, 2010. Defendant denies that Plaintiff was employed by "UNITED RENTALS," as
 24 defined by Plaintiff.

25 33. Answering the allegations of paragraph 33, Defendant denies each and every
 26 allegation of paragraph 33.

27 34. Answering the allegations of paragraph 34, Defendant denies each and every
 28 allegation of paragraph 34.

1 35. Answering the allegations of paragraph 35, Defendant is unable to admit or
2 deny the citations to the California Labor Code made by Plaintiff because, as stated, these are
3 statements of law, and not allegations of fact to which an admission or denial is required by the
4 Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant denies each and
5 every allegation contained in paragraph 35.

6 36. Answering the allegations of paragraph 36, Defendant is unable to admit or
7 deny the citations to the California Industrial Welfare Commission ("IWC"), Wage Order 9-2001,
8 made by Plaintiff because, as stated, these are statements of law, and not allegations of fact to which
9 an admission or denial is required by the Federal Rules of Civil Procedure. Except as qualified in
10 this paragraph, Defendant denies each and every allegation contained in paragraph 36.

11 37. Answering the allegations of paragraph 37, Defendant is unable to admit or
12 deny the citations to the California Labor Code and IWC Wage Order 9-2001 made by Plaintiff
13 because, as stated, these are statements of law, and not allegations of fact to which an admission or
14 denial is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph,
15 Defendant denies each and every allegation contained in paragraph 37.

16 38. Answering the allegations of paragraph 38, Defendant denies each and every
17 allegation of paragraph 38.

18 39. Answering the allegations of paragraph 39, Defendant denies each and every
19 allegation of paragraph 39.

20 40. Answering the allegations of paragraph 40, Defendant is unable to admit or
21 deny whether Plaintiff seeks damages and injunctive relief because, as stated, these are not
22 allegations of fact to which an admission or denial is required by the Federal Rules of Civil
23 Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation of
24 paragraph 40.

25 41. Answering the allegations of paragraph 41, Defendant is unable to admit or
26 deny whether Plaintiff seeks restitution of costs incurred by Plaintiff and members of the class under
27 California's Unfair Competition Law, because, as stated, these are not allegations of fact to which an
28 admission or denial is required by the Federal Rules of Civil Procedure. To the extent said

1 paragraph contains allegations of fact, Defendant denies each and every allegation contained therein.

2 **DEFENDANT'S ANSWER TO FIRST CAUSE OF ACTION**

3 42. Answering the allegations of paragraph 42, which incorporates by reference
4 each and every allegation contained in the Complaint, Defendant incorporates herein its answer to
5 each and every allegation contained the Complaint.

6 43. Answering the allegations of paragraph 43, Defendant denies that Plaintiff and
7 putative class members have worked for Defendant without being paid for all hours worked, regular
8 and overtime. Defendant alleges that Plaintiff's allegations herein are statements of law, and not
9 allegations of fact to which an admission or denial is required by the Federal Rules of Civil
10 Procedure. To the extent said paragraph contains allegations of fact, Defendant denies each and
11 every allegation contained therein.

12 44. Answering the allegations of paragraph 44, Defendant denies that it violated
13 statutory mandates to pay employees for all hours worked, and therefore, Defendant further denies
14 that Plaintiff and putative class members were damaged therefrom. Defendant alleges that Plaintiff's
15 allegations herein are statements of law, and not allegations of fact to which an admission or denial
16 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
17 denies each and every allegation contained in said paragraph.

18 45. Answering the allegations of paragraph 45, Defendant alleges that Plaintiff's
19 allegations herein are statements of law, and not allegations of fact to which an admission or denial
20 is required by the Federal Rules of Civil Procedure. To the extent said paragraph contains
21 allegations of fact, Defendant denies each and every allegation contained therein.

22 46. Answering the allegations of paragraph 46, Defendant alleges that Plaintiff's
23 allegations herein are statements of law, and not allegations of fact to which an admission or denial
24 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
25 denies each and every allegation contained in said paragraph.

26 **DEFENDANT'S ANSWER TO SECOND CAUSE OF ACTION**

27 47. Answering the allegations of paragraph 47, which incorporates by reference
28 each and every allegation contained in the Complaint, Defendant incorporates herein its answer to

1 each and every allegation contained the Complaint.

2 48. Answering the allegations of paragraph 48, Defendant alleges that to the
3 extent Plaintiff is making legal conclusions as opposed to statements of fact, these allegations are
4 denied. To the extent said paragraph contains allegations of fact, Defendant denies each and every
5 allegation contained therein.

6 49. Answering the allegations of paragraph 49, Defendant denies that Plaintiff and
7 putative class members have worked for Defendant without being paid the minimum wage under
8 California law. Defendant alleges that Plaintiff's allegations herein are statements of law, and not
9 allegations of fact to which an admission or denial is required by the Federal Rules of Civil
10 Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation
11 contained in said paragraph.

12 50. Answering the allegations of paragraph 50, Defendant denies that it violated
13 statutory duties to comply with minimum wage requirements, and therefore, Defendant further
14 denies that Plaintiff and putative class members were damaged therefrom. Defendant alleges that
15 Plaintiff's allegations herein are statements of law, and not allegations of fact to which an admission
16 or denial is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph,
17 Defendant denies each and every allegation contained in said paragraph.

18 **DEFENDANT'S ANSWER TO THIRD CAUSE OF ACTION**

19 51. Answering the allegations of paragraph 51, which incorporates by reference
20 each and every allegation contained in the Complaint, Defendant incorporates herein its answer to
21 each and every allegation contained the Complaint.

22 52. Answering the allegations of paragraph 52, Defendant alleges that Plaintiff's
23 allegations herein are statements of law, and not allegations of fact to which an admission or denial
24 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
25 denies each and every allegation contained in said paragraph.

26 53. Answering the allegations of paragraph 53, Defendant denies that it had a
27 policy and practice of failing to pay all wages owed, and thus class members have not been
28 adversely affected thereby. Defendant alleges that Plaintiff's allegations herein are statements of

1 law, and not allegations of fact to which an admission or denial is required by the Federal Rules of
2 Civil Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation
3 contained in said paragraph.

4 **DEFENDANT'S ANSWER TO FOURTH CAUSE OF ACTION**

5 54. Answering the allegations of paragraph 54, which incorporates by reference
6 each and every allegation contained in the Complaint, Defendant incorporates herein its answer to
7 each and every allegation contained the Complaint.

8 55. Answering the allegations of paragraph 55, Defendant alleges that Plaintiff's
9 allegations herein are statements of law, and not allegations of fact to which an admission or denial
10 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
11 denies each and every allegation contained in said paragraph.

12 56. Answering the allegations of paragraph 56, Defendant denies that it failed to
13 provide class members with meal and rest periods in accordance with California Labor Code section
14 226.7 and applicable wage orders, and therefore, Defendant further denies that Plaintiff and class
15 members are entitled to recover any amount therefrom. Defendant alleges that Plaintiff's allegations
16 herein are statements of law, and not allegations of fact to which an admission or denial is required
17 by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant denies
18 each and every allegation contained in said paragraph.

19 57. Answering the allegations of paragraph 57, Defendant denies that it failed to
20 provide Plaintiff and putative class members with meal and rest periods or wages in lieu thereof, and
21 therefore, Defendant denies that Plaintiff and putative class members have been damaged therefrom.
22 Defendant alleges that Plaintiff's allegations herein are statements of law, and not allegations of fact
23 to which an admission or denial is required by the Federal Rules of Civil Procedure. Except as
24 qualified in this paragraph, Defendant denies each and every allegation contained in said paragraph.

25 58. Answering the allegations of paragraph 58, Defendant alleges that Plaintiff's
26 allegations herein are statements of law, and not allegations of fact to which an admission or denial
27 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
28 denies each and every allegation contained in said paragraph.

DEFENDANT'S ANSWER TO FIFTH CAUSE OF ACTION

59. Answering the allegations of paragraph 59, which incorporates by reference each and every allegation contained in the Complaint, Defendant incorporates herein its answer to each and every allegation contained the Complaint.

60. Answering the allegations of paragraph 60, Defendant denies that it did not furnish or maintain accurate records for its employees as required by California Labor Code section 226(a). Defendant alleges that Plaintiff's allegations herein are statements of law, and not allegations of fact to which an admission or denial is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation contained in said paragraph.

61. Answering the allegations of paragraph 61, Defendant denies that it failed to provide accurate information in paystubs and in its records, and thus further denies that it did so knowingly or intentionally. Accordingly, Defendant denies that Plaintiff and putative class members were injured therefrom. Defendant alleges that Plaintiff's allegations herein are statements of law, and not allegations of fact to which an admission or denial is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation contained in said paragraph.

62. Answering the allegations of paragraph 62, Defendant alleges that Plaintiff's allegations herein are statements of law, and not allegations of fact to which an admission or denial is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation contained in said paragraph.

63. Answering the allegations of paragraph 63, Defendant alleges that Plaintiff's allegations herein are statements of law, and not allegations of fact to which an admission or denial is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation contained in said paragraph.

DEFENDANT'S ANSWER TO SIXTH CAUSE OF ACTION

64. Answering the allegations of paragraph 64, which incorporates by reference each and every allegation contained in the Complaint, Defendant incorporates herein its answer to

1 each and every allegation contained the Complaint.

2 65. Answering the allegations of paragraph 65, Defendant alleges that Plaintiff's
3 allegations herein are statements of law, and not allegations of fact to which an admission or denial
4 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
5 denies each and every allegation contained in said paragraph.

6 66. Answering the allegations of paragraph 66, Defendant denies engaging in the
7 practices listed by Plaintiff in paragraph 66, and thus, Defendant further denies that any such
8 practices were unlawful and/or unfair business practices pursuant to Business and Professions Code
9 section 17200, *et seq.* Defendant alleges that Plaintiff's allegations herein are statements of law, and
10 not allegations of fact to which an admission or denial is required by the Federal Rules of Civil
11 Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation
12 contained in said paragraph.

13 67. Answering the allegations of paragraph 67, Defendant denies that Plaintiff and
14 the putative class members have suffered injuries in fact and further denies that they have lost money
15 as alleged in said paragraph. Defendant alleges that Plaintiff's allegations herein are statements of
16 law, and not allegations of fact to which an admission or denial is required by the Federal Rules of
17 Civil Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation
18 contained in said paragraph.

19 68. Answering the allegations of paragraph 68, Defendant denies that Plaintiff and
20 the putative class members have suffered injuries in fact and further denies that they have lost money
21 as alleged in said paragraph. Defendant alleges that Plaintiff's allegations herein are statements of
22 law, and not allegations of fact to which an admission or denial is required by the Federal Rules of
23 Civil Procedure. Except as qualified in this paragraph, Defendant denies each and every allegation
24 contained in said paragraph.

25 69. Answering the allegations of paragraph 69, Defendant denies each and every
26 allegation of paragraph 69.

27 70. Answering the allegations of paragraph 70, Defendant denies each and every
28 allegation of paragraph 70.

1 71. Answering the allegations of paragraph 71, Defendant alleges that Plaintiff's
2 allegations herein are statements of law, and not allegations of fact to which an admission or denial
3 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
4 denies each and every allegation contained in said paragraph.

5 72. Answering the allegations of paragraph 72, Defendant denies each and every
6 allegation of paragraph 72.

7 73. Answering the allegations of paragraph 73, Defendant denies each and every
8 allegation of paragraph 73.

9 74. Answering the allegations of paragraph 74, Defendant alleges that Plaintiff's
10 allegations herein are statements of law, and not allegations of fact to which an admission or denial
11 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
12 denies each and every allegation contained in said paragraph.

13 75. Answering the allegations of paragraph 75, Defendant alleges that Plaintiff's
14 allegations herein are statements of law, and not allegations of fact to which an admission or denial
15 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
16 denies each and every allegation contained in said paragraph.

17 76. Answering the allegations of paragraph 76, Defendant denies engaging in any
18 alleged "illegal conduct," and thus, Defendant further denies members of the putative class would be
19 subjected to such conduct if equitable relief were not granted. Defendant alleges that Plaintiff's
20 allegations herein are statements of law, and not allegations of fact to which an admission or denial
21 is required by the Federal Rules of Civil Procedure. Except as qualified in this paragraph, Defendant
22 denies each and every allegation contained in said paragraph.

23 **DEFENDANT'S ANSWER TO SEVENTH CAUSE OF ACTION**

24 77. Answering the allegations of paragraph 77, which incorporates by reference
25 each and every allegation contained in the Complaint, Defendant incorporates herein its answer to
26 each and every allegation contained the Complaint.

27 78. Answering the allegations of paragraph 78, Defendant denies each and every
28 allegation of paragraph 78.

DEFENDANT'S ANSWER TO PLAINTIFF'S PRAYER FOR RELIEF

79. Answering Plaintiff's prayer for relief numbered "a" through "k," Defendant denies that Plaintiff is entitled to any such relief as alleged therein.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that:

The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that:

Plaintiff's claims, or the claims he may seek to assert on behalf of others, are barred by the applicable statutes of limitations, including but not limited to, California Code of Civil Procedure Sections 335, 338, *et seq.*, California Labor Code Section 203, and California Business and Professions Code Section 17208. To the extent that Plaintiff is claiming civil penalties over one year from the date of the alleged violation, Plaintiff's claims are barred under California Code of Civil Procedure Section 340.

AS AND FOR A THIRD SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that:

Plaintiff's Complaint fails to state a cognizable class under Code of Civil Procedure Section 382, FRCP Rule 23, or under any applicable rule or law regulating the maintenance of collective or class actions, including but not limited to, Plaintiff's failure to establish the requisite numerosity, commonality, typicality of claims and defenses, and representative status and/or standing.

AS AND FOR A FOURTH SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that:

Defendant acted reasonably and in reliance upon written administrative regulations, order, or rulings to assure full compliance with all applicable requirements of California State law relative to compensation paid to Plaintiff.

AS AND FOR A FIFTH SEPARATE AND AFFIRMATIVE DEFENSE, Defendant

1 alleges that:

2 Defendant is informed and believes that a reasonable opportunity for investigation
3 and discovery will reveal, and on that basis alleges that the Complaint and each cause of action set
4 forth therein is barred by the equitable doctrines of waiver, estoppel, consent, and/or laches.

5 AS AND FOR A SIXTH SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
6 alleges that:

7 Plaintiff's Complaint and each cause of action thereof fails to state a valid claim for
8 punitive, exemplary, or liquidated damages. Defendant has made good faith efforts to comply with
9 the law and as such even if, *arguendo*, Plaintiff, could establish any of the claims alleged in the
10 Complaint, there has been no willful violation of law.

11 AS AND FOR A SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE,
12 Defendant alleges that:

13 Even if, *arguendo*, Plaintiff, or any of them, could establish a claim for damages,
14 Plaintiff and each of them failed to mitigate such damages, if any.

15 AS AND FOR AN EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE,
16 Defendant alleges that:

17 The Private Attorney General Act "PAGA" imposes excessive fines in violation of
18 Amendment 8 of the California Constitution.

19 AS AND FOR A NINTH SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
20 alleges that:

21 The fines imposed by PAGA violate the substantive due process guaranteed by
22 Article I, section 7 of the California Constitution and the Fourteenth Amendment of the United
23 States Constitution.

24 AS AND FOR A TENTH SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
25 alleges that:

26 The claims of the individual Plaintiff is misjoined as he does not assert any right to
27 relief that arises out of the same transaction or occurrence, or the same series of transactions and
28 occurrences, within the meaning of California Code of Civil Procedure section 378(a)(1).

1 AS AND FOR AN ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE,
2 Defendant alleges that:

3 Defendant is informed and believes that a reasonable opportunity for investigation
4 and discovery will reveal, and on that basis alleges, that the Complaint, and each purported cause of
5 action therein, or some of them, are barred by Plaintiff's own breach of duties owed to Defendant
6 under California Labor Code sections 2853 through 2859.

7 AS AND FOR A TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE,
8 Defendant alleges that:

9 Plaintiff's claims for penalties, including, but not limited to penalties under labor
10 Code section 203, are barred because (1) there are *bona fide* disputes as to whether further
11 compensation is due to Plaintiff, and if so, as to the amount of such further compensation, (2)
12 Defendant has not willfully failed to pay such additional compensation, if any is owed, and (3) to
13 impose waiting time penalties in this case would be inequitable and unjust.

14 AS AND FOR A THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,
15 Defendant alleges that:

16 Plaintiff's Complaint, and each purported cause of action therein, is barred because
17 pursuit of a representative or collective action, in the context of the facts and circumstances of this
18 case, would constitute a denial of Defendant's due process rights and to a trial by jury, both
19 substantive and procedural, in violation of the Due Process and Equal Protection clauses of the
20 Fourteenth Amendment of the United States Constitution and the Due Process and Equal Protection
21 clauses of Article I, Section 7 of the California Constitution.

22 AS AND FOR A FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,
23 Defendant alleges that:

24 Plaintiff's Complaint, and each and every cause of action contained therein, is barred
25 in whole or in part by the Excessive Fines Clause of the U.S. Constitution.

26 AS AND FOR A FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,
27 Defendant alleges that:

28 Plaintiff's Complaint, and each and every cause of action contained therein, are

1 barred in whole or in part by the Due Process Clause of the California Constitution as interpreted in
2 *Hale v. Morgan*, 22 Cal. 3d 388 (1978), and its progeny.

3 AS AND FOR A SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,
4 Defendant alleges that:

5 Defendant is informed and believes that further investigation and discovery will
6 reveal, and on that basis allege, that any entitlement to relief by Plaintiff and/or those persons whom
7 he seeks to represent is barred or limited by the doctrines of "avoidable consequences."

8 AS AND FOR A SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,
9 Defendant alleges that:

10 Plaintiff's claims for injunctive and other equitable relief are barred because Plaintiff
11 has an adequate remedy at law.

12 AS AND FOR AN EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,
13 Defendant alleges that:

14 The Complaint and each and every cause of action set forth therein is preempted
15 and/or barred as a matter of law, in whole or in part, by the Federal Aviation Administration Act of
16 1994 (FAAAA).

17 AS AND FOR A NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE,
18 Defendant alleges that:

19 The Complaint and each and every cause of action set forth therein is preempted
20 and/or barred as a matter of law, in whole or in part, by the hours of service regulations promulgated
21 by the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of
22 Transportation; 29 U.S.C. §213(b)(1); 8 Cal. Code Regs § 11090(3)(L)(1); IWC Wage Order 9-2001
23 § 3(L)(1).

24 AS AND FOR A TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE,
25 Defendant alleges that:

26 To the extent Plaintiff claims overtime wages, his claim is barred by the Motor
27 Carrier exemption; 29 U.S.C. § 213(b)(1); 8 Ca. Code Regs. § 11090(3)(L)(1); IWC Wage Order 9-
28 2001 § 3(L)(1).

1 AS AND FOR A TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE,
 2 Defendant alleges that:

3 Plaintiff's claims under Cal. Labor Code § 226.7,512; 8 Cal. Code Regs §§ 11090(11)
 4 and (12); IWC Wage Order 9-2001(11) and (12), are barred because they are an undue burden upon
 5 interstate commerce in violation of the U.S. Constitution.

6 AS AND FOR A TWENTY-SECOND SEPARATE AND AFFIRMATIVE
 7 DEFENSE, Defendant alleges that:

8 Any alleged "off the clock" work by Plaintiff was de minimis and thus not
 9 compensable under California law.

10 WHEREFORE, Defendant seeks judgment against Plaintiff as follows:

- 11 1. Dismissing Plaintiff's Complaint on the merits and with prejudice;
- 12 2. Awarding Defendant its attorneys' fees, costs and disbursements; and
- 13 3. Awarding such other relief as the Court deems just and equitable.

14 Dated: December 12, 2011

16 //s// Todd K. Boyer

17 TODD K. BOYER
 18 LITTLER MENDELSON
 A Professional Corporation
 Attorneys for Defendant
 19 UNITED RENTALS NORTHWEST, INC.
 (ERRONEOUSLY SUED HEREIN AS
 20 UNITED RENTALS, INC.)

21 Firmwide:104969698.1 028767.1089